

REMARKS

I. STATUS OF CLAIMS

Claims 95-216 are currently pending and stand rejected. Without prejudice or disclaimer, claims 95, 100, 206, and 214-216 are amended to incorporate the limitations of claim 102, which is cancelled as a result, claims 103, 105, and 131 are amended to correct their dependencies, and claims 215 and 216 are additionally amended to correct the spelling of "keratinous." Exemplary support can be found in the specification and claims, e.g., Specification as-published (U.S. Patent Application Publication No. 2006/0134044) at ¶¶ [0071], [0171], [0210], and [0214]. Thus, no new matter is added herein.

II. INTERVIEW SUMMARY

Applicants' undersigned representative would like to thank Examiner George for his time during the November 20, 2008, telephonic interview to discuss the outstanding Office Action. Specifically, Applicants discussed with the Examiner the rejections under 35 U.S.C. § 112, ¶ 2, and the provisional double patenting rejection based on Application No. 10/528,265. After discussion of the terms "greater than or equal to," "less than or equal to," and the particular language and content of claim 134, the Examiner agreed to reconsider the 35 U.S.C. § 112, ¶ 2 rejections after the filing of this present response. The Examiner also stated that the double patenting rejection based on Application No. 10/528,265 contained a typographical error and should have referred to Application No. 10/529,265.

III. REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

A. Claims 95-99, 101-130, and 132-215

The Examiner rejects claims 95-99, 101-130, and 132-215 under 35 U.S.C. § 112, ¶ 2. See Oct. 1, 2008, Office Action at 2. The Examiner notes that the claims use the phrases “less than or equal to” or “greater than or equal to” and alleges that this is unclear. See *id.* Applicants respectfully traverse for at least the following reasons.

When determining a claim’s definiteness in compliance with 35 U.S.C. § 112, second paragraph, the Examiner’s focus should be whether the claim meets “the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available.” M.P.E.P. § 2173.02. Moreover, claim definiteness must be analyzed, not in a vacuum, but in light of: “(A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” *Id.*

Each phrase at issue presents two simple alternatives, whose meanings are definite and would be readily understood by one of skill in the art. Specifically, one of skill in the art would readily understand that in the case of “less than or equal to” the number following the phrase may have a value below the number following it, or the same as the number following it. In the case of “greater than or equal to,” the number following the phrase may have a value above the number following it, or the same as the number following it.

Moreover, the phrases “less than or equal to” or “greater than or equal to” are commonly used to specify values in patent claims that the Office has previously found

patentable. For example, claim 18 of U.S. Patent No. 7,168,833 reads, “The headlamp of claim 17, wherein the low beam output is greater than or equal to 1280 lumens and the high beam output is greater than 1500 lumens; and wherein the low illuminating beam output is greater than or equal to 480 lumens and the high illuminating beam output is greater than or equal to 730 lumens.” (Emphasis added).

Accordingly, Applicants respectfully submit that the meanings of these phrases are not indefinite under 35 U.S.C. § 112, ¶ 2, as they have a clear meaning that would be readily understood by one of skill in the art. Therefore, Applicants request that this rejection be withdrawn.

B. Claim 134

The Examiner additionally rejects claim 134 as indefinite. *See* Oct. 1, 2008, Office Action at 2-3. The Examiner appears to believe that the claim recites multiple ranges for the same variable. *See id.* Claim 134 reads,

The cosmetic composition according to Claim 133, wherein the homopolymer of which has a T_g of greater than or equal to 40°C, ranges from 60 to 120°C and the homopolymer of which has a T_g of less than or equal to 20°C, ranges from -50 to 0°C.

Claim 133 recites, among other things, a block with a T_g between 20°C and 40°C that results from at least two monomers, the homopolymer of one of which has a T_g of greater than or equal to 40°C, and the homopolymer of another of the at least two monomers has a T_g of less than or equal to 20°C. Thus, there are two ranges specified that refer to different monomers. Dependent claim 134 further narrows each of the two ranges, to 60 to 120°C for the homopolymer which has a T_g of greater than or equal to 40°C, and -50 to 0°C for the homopolymer which has a T_g of less than or equal to 20°C, respectively, but claim 134, just like the claim from which it depends, specifies

only one range for each monomer. Thus, Applicants submit that claim 134 is not indefinite and respectfully request withdrawal of the rejection.

IV. DOUBLE PATENTING REJECTIONS

The Examiner rejects the pending claims under the judicially-created doctrine of obviousness-type double patenting on nine different grounds:

(1) claims 95, 100-102, 104, 105, 109-111, 123, 124, 126, 128, 129, 136, 139, 141-144, 146-151, and 206-210 are provisionally rejected over claims 78-80, 84, 85, 87-102, 105-111, 129, 130, 132-134, 136-145, 160, and 162-164 of copending Application No. 10/528,699, *see* Oct. 1, 2008, Office Action at 4;

(2) claims 95, 100-102, 104, 111, 120, 123, 124, 126, 128, 129, 131-140, 146-151, 199, 201, 204-210, 212, and 213 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 85, 86, 89, 91, 92, 94-100, 108-141, 144-152, 168, 170-172, 176-182, and 184 of copending Application No. 10/528,835, *see id.* at 5;

(3) claims 95, 102, 104, 105, 109, 110, 122-124, 128, 129, 134-139, 141-144, 146-151, 199, and 201-214 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 80, 81, 84, 85, 88-92, 94-99, 110, 111, 130-133, 135-137, 139-149, 160, 161, and 163-176 of copending Application No. 10/529,218, *see id.* at 5-6;

(4) claims 95, 100, 104, 105, 112, 113, 122-124, 126, 128, 129, 136-140, 144, 146-151, 196, 199-210, 212, and 213 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 78,

108-110, 114, 117-123, 125, 145, 146, 159-164, 168-176, 200-203, 207-209, 211, and 213-219 of copending Application No. 10/529,265, *see id.* at 6-7;¹

(5) claims 95, 101, 102, 104-108, 120, 123, 124, 129, 131, 133, 135-139, 146-151, 199, and 202-214 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 77, 78, 82, 85, 95-103, 108-154, 158-163, 165-169, and 171-174 of copending Application No. 10/529,266, *see id.* at 7-8;

(6) claims 95, 100-105, 123, 124, 128, 131, 136-139, 141, 142, 147-151, 188-197, 200, 206-108, 210, and 211 are provisionally rejected on the ground of nonstatutory Obviousness-type double patenting as being unpatentable over claims 87-99, 133, 138, 140, 143-148, 152-158, 164-166, 172, 173, 181-183, and 185-187 of copending Application No. 10/529,267, *see id.* at 8.

(7) claims 95, 100, 101, 105, 120, 123, 124, 126, 136-138, 146-151, and 206-210 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10, 41-43, 50-55, and 86-90 of copending Application No. 10/585,817, *see id.* at 9.

(8) claims 95, 100, 101, 105, 120, 123, 124, 126, 136-138, 146-151, 196, 200, and 206-210, are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13, 42-45, 69, 75, 76, and 82-86 of copending Application No. 10/585,818, *see id.* at 9-10; and

¹ The Office Action identifies Application No. 10/528,265. As discussed above, however, the Examiner stated during the November 20, 2008, telephonic interview that this was a typographical error, and the correct application number should have been 10/529,265.

(9) claims 95, 100-102, 104, 105, 109-111, 123, 124, 126, 128, 129, 136, 139, 141-144, and 146-151 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 6, 10-19, 22-27, 41-44, 69-71, and 88-96 of copending Application No. 10/949,448, *see id.* at 10-11.

Applicants presently agree with the double patenting rejections and presently plan to file an appropriate Terminal Disclaimer when allowable subject matter is indicated.

V. REJECTION UNDER 35 U.S.C. § 102(b)

The Examiner rejects claims 95-100, 102, 104, 105, 109, 126, 131, 132, 135, 136, 139, 140, 143-151, 153, 154-158, 161, 175, 178-181, 184, 185, 199-201, and 214 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,254,878 to Bednarek et al. ("Bednarek"). *See* Oct. 1, 2008, Office Action at 11-12. Specifically, the Examiner asserts that Bednarek discloses "a solvent system and a binder comprising acrylic copolymers (col. 1, lines 46-63) and further comprising a plasticizer (col. 8, lines 51-65)." *Id.* at 11. While the Examiner concedes that Bednarek does "not explicitly teach the hardness of the film, solubility parameter or the polydispersity index," he asserts that "the hardness of the film and the solubility parameter are functional limitations of the plasticizer," and, therefore, the plasticizers of Bednarek will inherently have the same limitations. *See id.* at 12. The Examiner argues that the same would be the case for the polydispersity index of the block polymer. *Id.*

Although Applicants disagree with the Examiner, solely to advance prosecution, Applicants have amended the claims to recite that "the at least one block polymer is a

film-forming linear ethylenic polymer devoid of styrene that comprises at least one first block and at least one second block having different glass transition temperatures (T_g), wherein the at least one first block and the at least one second block are connected to one another via an intermediate block comprising at least one constituent monomer of the at least one first block and at least one constituent monomer of the at least one second block, and further wherein said intermediate block is a random copolymer block.”

Bednarek does not anticipate the claims, as-amended, because it fails to teach or suggest this limitation. There is no discussion of intermediate random blocks anywhere in Bednarek. Bednarek does not teach or suggest sequential polymerization, wherein polymerization is initiated with one monomer or group of monomers and another monomer or group of monomers is added when some but not all of the initial materials have polymerized, such that an intermediate random block containing both monomers or groups of monomers is obtained in the synthesized polymers. Nor does Bednarek teach or suggest any other way of obtaining polymers comprising intermediate random blocks as recited, for example, in claim 1.

Indeed, none of the examples of Bednarek teaches or suggests the claimed intermediate block. First, polymers A through I of Bednarek all contain styrene.² See Bednarek at cols. 10-14. Therefore, none of those examples anticipates the claims, as-amended, which require “at least one block polymer is a film-forming linear ethylenic polymer devoid of styrene.” Second, none of the polymers A-K or M is polymerized

² The original text of Bednarek refers repeatedly to “stirene” instead of “styrene,” but these errors were corrected in a Certificate of Correction dated November 5, 2002.

sequentially, and, therefore, these polymers do not teach or suggest an “intermediate block is a random copolymer block,” as set forth in the claims as-amended. Third, the details of the synthesis of polymer L are not provided, and, therefore, there is no *prima facie* basis for concluding that polymer L somehow falls within the scope of the claims as-amended. And finally, Bednarek fails to disclose or even remotely suggest that any of its polymers has an intermediate block as presently recited in the claims, as amended.

In view of the foregoing arguments, Applicants submit that Bednarek does not anticipate the claimed invention, and respectfully request withdrawal of this rejection.

VI. CLAIM 216 NOT SPECIFICALLY REJECTED

Applicants note that claim 216 was not rejected for any reason in the October 1, 2008, Office Action. Applicants respectfully request clarification or an indication that this claim presents allowable subject matter in the next communication from the Examiner.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

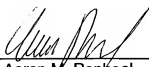
If the Examiner believes a telephone conference could be useful in resolving any outstanding issues, he is respectfully invited to contact Applicants' undersigned counsel at (202) 408-4152.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 2, 2009

By: 

Aaron M. Raphael
Reg. No. 47,885